MATTERS OF

JOSIAH OAKES, SEN'R:

FOUR YEARS

WRONGFULLY IMPRISONED

IN THE

McLEAN ASYLUM,

THROUGH AN

ILLEGAL GUARDIANSHIP,

BY MEANS OF

BRIBERY AND FALSE SWEARING:

CONTAINING A FULL ACCOUNT OF THE HEARING BEFORE THE SUPREME COURT AT LOWELL WITH JUDGE METCALFE'S INTERESTED CHARGE TO THE JURY, CONTRARY TO LAW AND EVIDENCE, AND

CHIEF JUSTICE SHAW'S OPINION

ON THE LAW RESPECTING INSANE PERSONS, CONFUTED BY EXTRACTS FROM THE

REVISED STATUTES,

SHOWING IT TO BE IN DIRECT OPPOSITION TO THE LAW; TOGETHER WITH OPINIONS OF THE PRESS AND MUCH

OTHER INTERESTING MATTER.

BOSTON:

PUBLISHED BY SPECIAL REQUEST.

[1850]

MATTERS OF JOSIAH OAKES.

TO ALL AND EVERY PERSON TO WHOM THESE PRESENTS MAY COME.

The writer must give a brief description of himself to be understood. He is in his seventy-fourth year, and his name is JOSIAH OAKES, SEN. I have spent most of my life in the State of Massachusetts, in and around Boston. My father was unfortunate, a prisoner about five years of my infancy, and a poor seafaring man, so that I had to go out, at about the sixth year of my age, to get my living, and could not be spared to go to school, so that what little education I have got, I picked up while doing business.

I learned a carpenter's trade, and carried on that business in and around Boston; was married and had several children, whom I brought up and gave a decent education. I earned and set apart considerable property against sickness and old age, which property has been dissipated, and I have been made a cripple and a beggar by the McLean Asylum, or by the trustees of it, and by the officers of the law, on a hearing, but against law and the constitution of the State, as will appear to all men of discernment, from the following true statement.

My time and property have been taken from me by force, without law and against law; and I ask all who read these words not to set anything down as true, wherever I give my opinion, unless supported by facts and evidence.

The McLean Asylum is not used for the purpose it was meant for, as I shall make it appear, by asking questions and giving facts which cannot be disputed. I was in the asylum over four years.

I will mention my own case. In the spring of 1842, at the beginning of summer, I had taken a small job of a gentleman by the name of Bouman. I had got my scow and timber all afloat, and just arrived at my wharf at East Cambridge, after dark, and as soon as I got on the wharf, Jones, the constable of Cambridge, clinched me in a very rough manner. I asked him what he wanted. He said he wanted me to go to the McLean Asylum. I asked what for? He said because I was crazy. I asked him who said so? He said he had Dr. Hooper's certificate. I said I never spoke to Dr. Hooper but once in my life, and that some time ago. I wanted to know where Dr. Hooper got his authority to take a man from his business without a moment's warning. Jones said, it was none of his business. I told him, it was some of my business, and I would not go until I had fastened my timber and scow, and then I would talk with him; and I told him if he forced me to go then, I would prosecute him if he had not legal authority to take me. He said he would run that risk. I went with him; it was between nine and ten oclock. I told the doctor it would hurt me and my business very much. The doctor said I should be fairly dealt by. I had, with my scow, and lumber, and engine, more than two thousand dollars worth of property afloat; if a storm had come on or a strong wind sprung up, and no one to take care of it, I should have lost the greater part of it.

In three or four days after my imprisonment, the doctor told me nothing ailed me, and that I should leave there immediately, and I left, so that all the time I was there was about nine days; but it injured me more than $5000, for that summer I could get nothing to do, only a little job which I engaged before I went, for people thought I was crazy, although the doctor pronounced me sound. I was determined to know whether I had my liberty, and if not, I would leave the State, and go into some State or country where liberty was guarantied by law.

I took a twenty dollar bill, and went to Salem to see Judge Ward. At that time, he was an attorney at law. I told him my case, and asked him what the law on insanity was, and told him if he would show it to me, I would pay him for his trouble. He said the constitution declares that no citizen shall be deprived of his liberty, but by the judgement of his peers, a jury, or by the laws of the land; that in the Supplement of the Revised Statutes (page 50) there is a law for this very purpose, that any man accused of insanity, shall be tried by a jury of six lawful men, if he request it, and the judge shall order the sheriff to summons a jury and proceed as in a court of twelve men, when brought before a court on a habeas corpus. Chapter 111, sec. 22, if no legal cause for the imprisonment or restraint be shown, the court or judge shall discharge the party therefrom. The law leaves no discretion with the court. There must be a legal cause shown for his detention, or he shall be discharged.

The Bible says, Exodus, Chap. 21, verse, 16, "He that stealeth a man and selleth him, if he be found on his hand, he shall surely be put to death."

17. "And he that curseth his father or his mother, shall surely be put to death. This is Bible Law. Now what is stealing a man? It is taking him by force, against his will, and confining him without legal authority. What is legal authority? A Court appointed by legal authority — the Legislature — not a Dr. Hooper, or a self-made court like the Mclean Asylum. The Asylum is incorporated and have a right to make laws to govern the institution, but it has no right, and the Legislature has no right, to make laws against the Constitution of the State, for the Constitution is above the Laws. Any Law of that kind would be null and void. First Corinthians, first Chapter, 27th verse says, "God has chosen the foolish things of this world to confound the wise, and the weak things of this world to confound the things that are mighty."

Now what are the Laws of Massachusetts. Look at the Revised Statutes, chapter 125 sec. 20. It says, "to take a man without legal authority, and confine him against his will, he shall be punished by confinement in the States Prison not more than ten years." Look at the whole sections, 20. 21.

I followed my business until 1844, and was then taken by a gang of men, near the States Prison in Charlestown, and shut up in the McLean Asylum, and used as if I was in a tomb. Dr. Bell was there. I told him how it affected me and that it was destroying me. I told him what the Laws respecting insanity was, and that I got my information from Judge Ward of Salem

He paid no attention to what I said. I told him I was there without legal authority and against it, and had not been tried. If he left me I would prosecute him for false imprisonment.

About the middle of January, I managed to get out a writ of Habeas Corpus, and had a hearing before the Judges of the Supreme Court. I was sent back to the Institution. (Private.) I consider the office of Chief Justice of the Supreme Court as responsible, and the salary is about the sum of $3500, and his judgment ought to be respected by good citizens in the state, so long as he does his duties according to law and justice.

I expected justice to be done by so high a court, but I was sadly disappointed. To be sent to that institution, where there is no law but tyrany, is very unjust and cruel. I think the judge was wrong on every point in the case. In the first place, Drs. Bell and Fox ought not have been admitted as witnesses, as they were interested. By the law of the bible, they were swearing themselves clear of the gallows, and by the law of Massachusetts, clear of the States prison for ten years. If the judge had ordered me out of the court to be hung until dead, it could not have distressed me so severely as to send me back to that dismal and dreadful place, and I believe it would have been as legal and lawful and more humane, for nothing can be more distressing than imprisonment, and no time set for deliverance.

I never was insane, and there was no evidence that I was, excepting that of Drs. Bell and Fox. Look at Dr. Bell's letter at the time I left for Northfield, and then at his evidence at Lowell. That is enough to condemn any man without saying a

word. To swear that I was incurably insane, when he had not seen me but once for a few minutes, for more than a year as he did.

I had the same right to be tried by a jury as Professor Webster, and more so, because there is a law for the benefit of those accused of insanity. Judge Shaw had as much right to hang Professor Webster, without a trial by jury, as to send me to a private mad house without any evidence, except Bell and Fox. I am going to print all Judge Shaw said on the habeas corpus, and make a few observations on some parts of it, as appears to my weak mind. I hope it don't appear to others as it does to me.

On the fifth page Judge Shaw ruled that the burden of proof was upon the petitioner, to make out sufficient cause for discharge. That was putting an impossibility upon the petitioner, if Bell and Fox were to be believed. Where does Shaw find the law to say that all is regular. The law says to take men without legal authority, he is liable to imprisonment in the States prison for ten years. By what law did Fox detain me? I say there is no law. But this act of despotism was and is approved of by the public. There is a set of men that approve of all manner of wickedness. The fellows who placed me under Fox, were a murderous gang. After beating me, after wrenching my arm, so as to cripple it for the rest of my life, will you call it law and humanity? The truth is, all was wrong, illegal, cruel, and damnable, from beginning to end; and this will appear before the throne of God, where there is nothing but truth and justice.

For the basest hypocrite is known by the disguise he wears. The $10,000 bond was never heard or thought of by me until I left the asylum, and one year after it fails in every particular. I will only mention the filling up of the facts and the contract with Drs Parkman and Jackson. We will say eight acres, 449 480 feet would not have cost more than seventy cents all filled up, and at this time it is worth twice seventy cents. I will ask if it shows a man is crazy, if he offer one man $100 and another $50 to assist him in getting a bargain where he could make between two and three hundred thousand dollars. It does not seem so to my weak mind, if it does to people of strong minds.

After four years I got my case before the Supreme Court at Lowell. The jury heard all the evidence, and I expected justice from the Judge, but to my surprise he ruled every part against me, and plead the case against me, and tried to underrate all my evidence. He says, once for all, I shall impress upon your minds that the medical gentlemen who have testified, except Bell and Fox, do not profess to be qualified on the subject of insanity. To compare Dr. Lewis with Drs. Bell and Fox, is like comparing a mouse to an elephant. Dr. Lewis is a great and good man. I shall consider Bell and Fox as one, for they agree in all parts.

How such a man as Dr. Bell has deceived the Trustees of that institution, for so long a time, is more than my weak head can comprehend, for they are shrewd and sharp men. Dr. Booth is a man of mind and worth, fit to be at the head of that or any other institution. Mr. Tyler is a good man and fit for the place. The only fault I find with Mr. Goodhue is not having resolution to do right at all hazards. Mrs Tyler is a humane and good woman, and I think a beautiful woman; and Mrs. Booth and Mrs. Bell the same.

I will ask all those who read these words, if two men were introduced to them; one very intelligent and quick to answer all questions correctly, and the other not able to answer the simplest question you put to him, could you not tell the intelligent one. Most surely. That is what makes me say, that a man that cannot tell a sane man from an insane man, has not sense enough to tell a horse from a cow, for the difference is as great.

In order that the reader may understand more fully the nature of the *justice* which is sometimes received at the hands of those who are the judges and executors of the law, I will subjoin a detailed account of the trial, the evidence given at the bar, the opinion of the *learned* hench, together with extracts from the Revised Statutes, of the law respecting insane persons, and leave you to judge of the transaction for yourselves.

THE ALLEGED LUNACY OF JOSIAH OAKES, SEN., OF CAMBRIDGE. SINGULAR AND INTERESTING DEVELOPMENTS.

SUPREME JUDICIAL COURT.

Lowell, Tuesday, April 23, 1850, 5 P. M. Presiding—Judge Metcalfe. Counsel for Petitioner—Robert Rantoul, Jr., and Ebenezer Smith, Jr., Esqs., of Boston. Counsel for Respondents—Ephraim Buttrick, Esq , of East Cambridge.

This case, involving some of the most important questions of natural right, medical jurisprudence, mental phenomena, and civil liberty, is one of the most interesting ever brought before a legal tribunal

Deputy Sheriff Coburn, of Boston, was the first witness. Remembered conversations with Josiah Oakes, the petitioner, in which he spoke of an intended marriage, that the lady was like his former wife, very pretty, and he would marry her, no matter what objections were made.

Paul Adams, wharf-builder, Boston, has known Josiah Oakes, senior, for twenty years. Has often talked with him on various subjects, principally improvement of property. He could talk very well.

Charles Cummings, blacksmith, Boston, has known the senior Oakes since 1822. Has only spoken to him once or twice since February 1st. He did not exhibit any strangeness of manner.

Cross examined by Mr. Buttrick. Oakes called at my house; staid a couple of hours; said he thought it hard to be kept out of his liberty by some of the children; spoke of the Parkman contract; the flats were to be four shillings per foot; Parkman was to find ready money for the filling up; when filled up Parkman was to be repaid by the new-made land, not less than one dollar per foot. Told him I thought it a good bargain. Oakes said he had been kidnapped just as the papers were ready. Has been so long acquainted with Oakes that he can converse easily with him.

Ezekiel W. Pike, builder, Boston, Mass. Known Oakes, senior, fifteen or twenty years, but has only seen him three or four times since February 1st, and once he came to my house. Had heard he was dead and was glad to see him. O. said he ought to be paid for the time he lost in confinement, and that he should have made 75 or 100,000 dollars by the Parkman contract if let alone.

Alexander Blakie, clergyman, Boston. Is a pastor in the Presbyterian church. Has known Oakes since February 6th. He usually tells his grievances before long in talking. Liked to talk with him as he seemed to have great foresight for an uneducated man. Said it was enough to make a man mad to be shut up in a mad house. Has known Mr. Devens, one of the sons-in-law, about a year. Is not quite certain whether Devens mentioned Oakes before they were introduced to each other at Deven's house.

Amasa Davis, carpenter, East Cambridge. Has known Oakes for twenty-five years. Since February 1st has seen him about half-a-dozen times. Oakes used to come and ask him to examine and apprize his houses. His ability to make money and do business is the usual topic of his conversation. Said his family had been cruel to confine him from his business.

Leonard Fuller, iron-founder, Boston. Has seen Oakes several times since February 1st. Talked about Dr. Parkman principally. Spoke of his detention being hurtful to his business.

Winslow Lewis, Jr., physician. Has only known Oakes about three months. Oakes calls almost daily to afford opportunity of consulting about his mental power. Considers him sane. The topics of the day are usually considered. Sometimes he would refer to a schedule showing him to be worth thirty to thirty-five thousand dollars. About the flats, he said, if that was a mad bargain he should like to make such bargains all the while. Is impressed that Oakes never was insane. Thinks him vain of his smartness. The delusions of self-conceit are not to be counted insanity.

William Hawes, physician, Boston. Has been called by Catharine Oakes (Devens) and her husband to consult with Oakes about his mind. Considers his deafness to be the principal misfortune. Could not discover any unsoundness of mind.

Cross examined by Mr. Buttrick. Is 33 years of age. Has practiced nine years. Has not paid especial attention to cases of insanity. Mr. Devens called upon him first.

Mrs. Devens. Is a daughter of the petitioner. Has had frequent conversations with him since his release from the Asylum in December, sometimes daily. He speaks of his troubles with tears in his eyes Says he has no home, like a home. His board was paid by one of his children in New York, and it crushed his spirits. He goes to church regularly. Is quite willing to trust her little boy (three years old) out walking with him Is perfectly harmless, and always amiable. Would acknowledge that her father was insane if she thought so. He settles bills and attends to little house expenses, and she knows him to have saved half a dollar on one

bargain by his voluntary management. He has showed her a schedule of his property, and explained it to her. A wharf at East Cambridge, which he purchased of Abbott Lawrence, he particularly complained of being deprived of, saying that it had been illegally sold to Amory Houghton by connivance among some of the family, while he was confined at the Asylum. He complained also of his treatment there, and said that the principal motive was to get hold of his property. Said that even if the person he wanted to marry should turn out bad, that was no reason why he should be put into an insane asylum. Other old men had married young ladies without being sent to a hospital for it. Did not complain of the system or diet of the Asylum. His habits are simple and wants are few. He told Dr. Bell he could write sermons. The Dr said he would give him a text. The text was from the New Testament, where the devil tempts Christ with a view of great possessions.

WEDNESDAY, APRIL 24.—Mr. Graham. recalled. J. Oakes said to him that it was a mock trial which caused his confinement. Said he did not believe he was lawfully detained, for he had asked Judge Ward of Salem, who told him he could not be deprived of his liberty except by a jury. O claimed that he had been promised his liberty by Dr. Fox, in thirty days, and then, when Dr. Fox was away, Dr. Bell said he did not know anything about thirty days. When the committee of visitors came to the Asylum, O. said that he told them they were all liars, and ought to be sent to the State Prison. Believes that the young woman spoken of as O's. intended wife cannot be found now. Has heard reports that she was not a respectable woman.

Mr. Smith now resumed the reading of depositions.

William A. Newell, of Northfield. Deposes that he is twenty-four years of age, and is station agent for the Vermont and Massachusetts Railroad. Has seen O. almost daily for the past year. Once took a daguerreotype for him to New York, and once brought him a box of fire-proof paint thence He used to come to the depot and loved to talk. Supposed him intelligent as other men. Has been told by George A. Stearns that the children desired Oakes to be under guardianship, that if he should get his property in his own possession, it would be unsafe and soon squandered, and that the children were all well off, and did not have any idea of enriching themselves. O. found fault with the architecture of the bridge, saying he should have contrived it differently.

Elisha Alexander, farmer of Northfield. Is forty-three years of age, and am now deputy-sheriff. Did not know O.'s given name before. Have seen him at church and round the village, but did not notice any aberration of mind. The idea would not have occured to me. Did not converse with him or hear him converse.

George Hastings, trader, of Northfield. Is twenty-eight years of age. Have talked with O. at the store, and at the post office, but did not notice any insanity. Never had occasion to speak with him more than a few minutes at a time.

Thomas Mason, of Northfield Is eighty years of age and "occupation is nothing" Have met O. round the village. He seemed like a gentleman who did not desire to make any new acquaintances where he was merely a visitor for a passing hour. Have been told that deafness was the cause of his silence.

William B. Farnsworth, farmer, of Northfield. Is fifty three years of age, and has care of the church of the First Parish. Frequently met O. while in N. last summer, and observed no indication of insanity. He seemed as other men, but more active than the average.

Franklin Lord, farmer, of Northfield. Is 42 years of age. When O., was in the village, saw him at various places. Did not converse with him enough to form any definite idea of his intelligence. His health was good, and he appeared very active.

Joseph Young, farmer, of Northfield. Is 58 years of age, and remembers seeing O., about the village and reading papers around the post-office. Seemed intelligent and active. Only spoke to him twice while there, and then but for five or ten minutes at a time. Did not hear him converse with others.

George Mason, farmer, of Northfield. Is thirty-three years of age, knew O., when he was in the village last summer. Did not notice any symptoms of insanity. Does not remember any particular subject of conversation.

Mark Woodward, wheelwright, of Northfield. Is fifty-five years of age, and remembers O. residing in the village, in 1849. In the latter part of the summer, he called three or four times. He said he used to live there a long time ago. The subject of removing a building was mentioned, as I had the job. He said he was a famous hand at such jobs He also spoke about his son in New York, saying that he was doing good business there, for he had given his said son lessons in sharp dealing while young. Consider him a pretty bright and active man. Should not have suspected any insanity. Have heard the Stearns family speak of him as insane. They also said he was a peaceable and quite man. Have talked with him for half an hour at a time. He used to say that if he had a farm, he could make money by it

Windsor L. Fay, post-office clerk, of Northfield. Is twenty-two years of age, and remembers O., being in the village last year. Used to see him at church, at the tavern Sunday

noons, and at the depot. In settling his post office accounts, he seemed as intelligent as most men, and capable for business. Used to see him daily. During the excitement about Dr. Parkman, O., seemed to be much interested, and conversed like others about it. Also saying that he and the Dr. had frequent dealings, together. O., said he had considerable property, but did not mention any amount. He said he had worked very hard, took heavy jobs, and made much money. Generally, the talk was on the topics of the day. His postage bill was about one dollar to $1 50 per quarter My opinion of his business capacity is founded on these transactions. Charles Mattoon is the postmaster.

The Court, having previously intimated that the subject-matter of the evidence need only relate to the time elapsed since the petitioner's first ground of complaint (1845,) the case for the petitioners rested here, and Mr. Buttrick made his opening address on behalf of the respondents.

He commenced by describing and deploring the painful position in which his clients were placed by a peculiar train of unfortunate circumstances which have combined to influence their apparently unnatural movements towards a kind and indulgent father, such as Josiah Oakes had formerly been. He here prays to be released from a legal guardianship, alleging that he is restored to healthy reason. If such were the fact, no event could possible give more joy to his loving children. But it is for this jury to ascertain the existence of that fact. The whole address was highly effective, and seemed to illuminate the preceding evidence with a new coloring of light on all the principal points of interest.

Columbus Tyler, of East Cambridge. Is steward of the McLean Asylum, since 1821. Knows Josiah Oakes. He has been twice in the Asylum. The first time three dollars and fifty cents was paid weekly, the second four dollars. Knows nothing of any such window being broken by Oakes. In 1848, during the summer, he used to go out every fair morning. His appetite was good, and he was a costly patient. The institution was a loser by him. He would go out and bring in bills of goods to be paid for. He looked earnestly for the payment. (Recognized some bills shown as being in handwriting of Oakes.) These bills mention land, manure, etc. One spot he said sloped towards the morning sun, and it was his preference. In December, 1849, thinks he called twice in one day to collect the amount, due as he said in these bills. He said he never made any mistakes, could write a better sermon, was a better lawyer and general than any other man. He also boasted that he could walk through a door whenever he pleased. In walking, he would walk very fast. Once he remonstrated with him, and O., raised one arm very violently. They were coming from church

To Mr Smith. Does not remember how many persons were present at the time—average number of patients is about 200. When the Supreme Court decree was made, O, said he was a better lawyer than the lot. There are about 220 rooms in the building. Does not think that a sash has been broken, as he would be told of it. There are three sashes to each window. Testified about the bills before the Probate Judge; does not remember to whom he returned the bills; has not seen them since; feels nearly certain that the bills now shown are the same Is positive of the handwriting being Josiah Oakes's. Does not remember speaking of the sash at the Probate Court; does not know whether those bills could be explained by the head farmer, and the man then acting in that capacity is now gone to California. The price of land is very variable round the Hospital.

Francis Houghton, one of the firm of Houghton & Co., East Cambridge. Remembers one day O. came into their counting-room much excited, saying that he could have made much money, but had just been interrupted in getting some land for $60,000, which he might have sold for $200,000.

To Mr. Smith. Is not aware that there is an estate called the Joy estate near the Asylum. Is a brother of Amory Houghton, the guardian of Oakes.

Benjamin Smith, of Boston Is acquainted with O. His wife is a cousin of O.'s has seen O but once this last winter; O. said he was about to receive the control of his property. Told O. that he did not think his children would willingly hurt him. O. said that he did not impeach the motives of his children, but thought they had treated him so wrong that he did not like their judgment. This was in March last. O. said he could make money just as fast as ever. Some fifteen years ago, O. put up six or seven granite stores for him and then he seemed all right, not talking about such things as suspicions.

To Mr. Smith. Is not bondsman for Mr. Houghton, the guardian. Appraised O.'s property, real estate, $6,000; personal, $2.830 75. The wharf by the Point Bridge has 150 feet front.

Mr. Buttrick here addressed the Court, to the effect that it was time now to show that the contract said to have been made with Dr. Parkman never existed in fact.

Dr L. V Bell, of the McLean Asylum. Has been superintendent 14 years. Knows Josiah Oakes. First received him in June. 1842; next year met him once or twice in the street; then on the 16th Dec., saw him again. On the 27th Dec., left for Europe, and O, was put in charge of Dr. Fox, who was selected to succeed him. When returned from Europe, attention was drawn to the regular returns of paroxysms, depressing and exhilarating alternately. His

time was valued by himself at $1000 or $100 a day, according to circumstances. Sometimes he would boast of being too pure to care for money or worldly business. On legal affairs, the Supreme Court were all babies to him. He would boast of being able to get out and go over to Boston whenever he pleased, after the doors were closed for the night. On one occasion, I said to O., "Why did you not stay over there?" He looked first silly, then angry, and then shouted out—"It's none of your d—d business!" The fits of melancholy were on the other extreme; but his physical powers were wonderful. One day he walked out to Lexington and back, and then to Medford and back. One occasion, when trying to get some money by making out bills against the steward, after trying all usual coaxing with him, he became violently vociferous, and we had to remove him to a locked cell. In the spring of last year he would go out farming, and left for Northfield on the 9th April. But he would keep talking about $200 he had cleared on one of the steward's bills. Consider's Oak's case one of marked insanity, as much so as any patient he ever had. (The case described of one of the daughters, in 1847, we omit.) It is one of the rarities of practice to observe a recovery from insanity when it has existed for four years. When O. first came to the institution, he was not liable to depressions · latterly he was more so. Those patients who deny their liability to mental weakness are the most certainly incurable. Believes that insane people generally admit that something has been wrong after they are cured, and rather like to talk about it. The incurables always deny it. Has not heard that O. ever broke an iron sash at the Asylum. O's mind is one of those which indulge in braggadocio at the best of times.

To Mr. Smith—Did not say so much in the Probate Court; answered all the questions put; if the whole four years O. was in the institution were to be reviewed, could relate much more than is now said; presumes he must have seen O. at least once a week; cannot say how many conversations they had; O. was with a conversable class, but when the depressing paroxysms were on, he would not talk; one time he went without eating three days, and said he would starve himself, so that he might be executed for his own murder; had frequent calls from the relatives, but does not remember what he may have said to them; Mrs. Houghton (the daughter previously alluded to) was formally discharged with every reason for expecting a perfect cure; O. was not discharged, as the hopes of quiet were all upset by his returning paroxysms.

The letter now shown me is one that I sent to O. in hopes that it would soothe his mind with good hopes and facilitate his recovery, but his recovery became worse, and he is at this moment an inmate of the Asylum, absent on leave.

To Mr. Buttrick. Purposely avoided all mentions of excitable subjects in O.'s presence. O. would bring the subject of marriage forward among any other conversation.

Dr. John Fox, physician, of Chelmsford. Was principal medical officer at the McLean Asylum for four years previous to 1848; knows O as a very restless patient. Used to say he would give all his property rather than stay at the Asylum one day; after a little while he would say that he wished to stay there forever. Always supposed that the appointment of a guardian for O. was his own wish, as he seemed quieter afterwards. Has heard him say so. Has known him to go away once three or four weeks on parole, and returned with his coat torn and showing every sign of high excitement. These paroxysms were not affected by the seasons, but the comparatively lucid interval was usually two months. The idea of making money was always uppermost. Not the enjoying, but the making. The greatest hardship he could have was to be deprived of that opportunity. Is not aware that O. has any hard feeling towards him. Used to say that the children did not oppose his liberty with any selfish motive. As for the decision of the Supreme Court O. said he knew the laws better than Judge Shaw. When the patient insists that he has not been insane, it is a strong proof of insanity, because it betrays a lack of observation and consciousness.

To Mr. Smith. Always tried to see all the patients every day, if possible. About a fourth of them are able to converse. Saw Josiah and George come to see O but is not aware that they made any proposition to O. about his property being exchanged for his liberty, in January, 1845. In February, he went into the country visiting On returning, sometime in April, he seemed highly excited. Always seems to have satisfaction in taking an account of the damages he expects to receive from those who have deprived him of his usual pleasure of making money. Since 1845, O. has had fits of depression.

Martha R. Houghton, a daughter of Josiah Oakes. Visited her father at Northfield. He said he could make money, and was not insane. Used threats of getting damages from those who had put a guardian over him. I never heard Mrs. Devens disapprove of her father's confinement. Went to Northfield again in November. Found father talkative, and speaking against the children. Does not remember his blaming the officers of the Asylum. Did not doubt making a fortune by farming, and said that he had been confined at the Asylum to prevent his making money. His laughs were hysterical.

Geo. A. Stearns, carpenter, Northfield. Is a son of Calvin Stearns, and 34 years of age. Has known Josiah Oakes for 20 years. Saw O. all last summer, except in August. Some-

times he would come to the shop, at others to where he could find the witness. O. used to say that nine shillings a day was no pay for him. Five dollars a day was what he could earn at carpentering. Has heard O speak of his children, and say that they should be made to pay for his lost time at the hospital. Pointed out some place in the Revised Statutes that backed his opinion. He also said the farmers were fools in Northfield, for they were poor and did not know how to make money. He'd teach them book-keeping.

Calvin S. Stearns farmer, Northfield. Is a son of Calvin Stearns, and is 29. Saw Josiah Oakes last summer. He would boast and say that he knew be ter than any one, on most subjects. Has seen him hoeing, with his pants pulled up over his knees. Speaking of his property, he would say that he could make money easier than any body else.

To Mr. Smith. Was boarding in the same house when I was at Northfield. From June to February was engaged in various ways and saw O., round about at different places. Heard him say at the house that the officers of the McLean Asylum were all thieves and robbers, getting a living by cutting throats. O , would thus talk before all the family about three times every two days. Testified to this before Judge Fay. It was usually said at meal times. Mr. and Mrs. Devens visited us and took their meals with the family while there.

Edward Stearns. Has heard O., say that he was put to trouble because he could make money so much faster than other people. Is a brother to the two procceding witnesses.

Thursday, April 25. Rev. Thomas Whittemore. Visited Josiah Oakes a dozen times while in confinement at the Asylum; was sent for by him; have known him since 1822; on one occasion he appeared to have a cold; he said that he had had a ramble round Boston, and made signs that he had forced the fastenings of the doors; said he could make more money than his guardian; visited him two or three times a year while there; O used to say I did not visit him often enough; his ideas of property were inflated, and he claimed the right of several inventions; he felt hurt at Dr. Parkman's not consummating the bargain, as much so as with the family; considers O 's mind as unhinged; during the four years he was there, this conviction grew out of conversations with him.

George Hamlet, toll-gather on the Canal Bridge. Was formerly employed in the Asylum for four years; left there in 1843; saw O. one time in December while he was boarding with the Houghton family; he was talking about his confinement, as usual; and set out to describe one of his escapes from the Asylum; he said he took a board and placed it where he could break the iron wire screen to one of the sash windows; then, that he stopped and considered it best not to do it, for people would say he was insane; witness has no doubt he was telling this circumstance as a fact; did not like to contradict him, as he was too well acquainted with his ways of talking; it is not worth while to contradict such a mind as his; never knew him to qualify a statement by explanation. Patients like him never do.

Mr. Buttrick now read the following depositions on behalf of the respondents—

Charlotte Lane, wife of Samuel Lane, of Northfield. Deposes that she has resided there for the last five years; was formerly a school teacher; have known Josiah Oakes for fifteen years; the last ten months he has resided with Calvin Stearns who is her father; at first he behaved very well, but when more acquainted he took liberties which I thought strange for a man of his age; he would ask me questions, and plead his deafness as an excuse for my coming near to him, so that he might attempt to kiss me; when talking to her father O. preferred the subject of his confinement to all others, using harsh and profane language; he was fond of boasting about being able to work just as well as any young man, her brother Albert, for instance, who is remarkably active; used to say he was as strong and active as ever; in making bargains he said nobody could beat him, and that if he had not been stopped by the Asylum, he might have been worth $100,000; he said the farmers were poor because they did not read the Cultivator, as he would if he had a farm; finally his conduct was so gross and improper, that she thought best to inform her mother of it.

Statira Stearns, wife of Calvin. Has known Oakes for forty-five years; resided with us for ten months lately, at Northfield; his principal topic of talk—it cannot be called conversation —is about the McLean Asylum, he said the only bad bargain he ever made was in marrying the second time; but no man could have cheated him; if he had not been restrained by a guardian, he could have made $25,000 a year the last four years; said that the Asylum people abused him cruelly, and he would sue them all for his lost time; in various ways, his talk indicated insanity; speaking of Amory Houghton, he would praise his good qualities; but when speaking of him as his guardian, the case was different; we tried all we could to avoid an excitable subject before him; one of the sons sent twenty dollars for me to let him have, as he might want it, and I did so; twenty dollars having been sent to him once before, he used it all at once for a bad purpose. April 16, 1850.

Elizabeth S. Stearns, of Northfield. Has known Oakes for 30 years; saw him daily when here last year; he used to say that no person was insane who knew right from wrong; he also said that he introduced many improvements in the management of the McLean Asylum; it was badly conducted, and he meant to show them further improvements as soon as he got

his full liberty; our farmers also, he said, were a slack set; he said he never did any wrong, but he used to try to kiss me; I did not think him capable of taking care of himself; he would always begin a talk by denying his insanity; he said Dr. Bell only kept him to get the pay for his board; no one has influenced my disposition. April 18, 1850.

Mary Ann Oakes, of New York City. Is a daughter of Josiah Oakes, aged 43; my mother died in East Cambridge; in the summer of 1849, was at Northfield, and saw my father; I noticed his talk being most unreasonable; sometimes he would fancy himself very rich; at others, he would say that officers were coming to take away the furniture for debts; and then he would go and hitch a rope in the cellar to hang himself with; we had all been shocked at his lack of feeling on the death of my mother, and used to guard him more carefully; I think Mrs. Houghton would like to have kept him at her house, but the risk was too great; although he always tried to be kind and affectionate, it was impossible to tell what spells of violence or melancholy might overcome him. Sworn before Moses B Maclay, in New York, April 5, 1850.

As we have been compelled to abbreviate the evidence for the respondents, the following remarks. by Mr. Buttrick, may be read with interest.

Two days have now been occupying your attention in receiving the evidence in this case, and it is hardly likely that it could have passed before you, without leading your minds to some conclusive result. I shall not, therefore, detain your time longer than sufficient to slightly review the testimony.

First, then, we have that of Benjamin Smith, to which your memory will refer; and from all the fifty-three or four other witnesses, it appears that prior to 1848, Mrs. Devens did not discover any of the bad and cruel treatment now so eloquently complained of in her testimony. I may be wrong gentlemen, but I have the impression that Mrs. Devens is influenced by Mr. Devens. Of course it is for you to judge of the fact. By their own testimony it appears that the unfortunate petitioner was placed to board at places where they knew the majority would not like to visit. On the other hand, we find the rest of the family, eight in number, all acting in harmony and good faith with the guardian, whom circumstances and the law made requisite for his welfare.

We find Oakes under the influence of excitement from the delusion of supposing his children to be acting by interested motives on account of the probability of a second marriage. The Parkman flats also formed another key to Oakes's mind almost everywhere or at any time. In Mrs. Stearn's testimony, we find her trying to lead his mind away from that delusion. But, immediately after saying that his children were all beloved by him for their goodness, and also that his guardian was one of the most honorable men that ever lived, yet the delusion came uppermost after all. Thus it is throughout. He stigmatizes the guardianship as illegal, although it is legal as long as the decree of the Supreme Court is not revised. Any sane person can see this, even if opposed to that decree. But Mr. Oakes, (such is his misfortune), is not able to see that it cannot be called illegal, even by those who might think it unjustifiable.

This indicated sign of the state of his mind, leads us to inquire whether good hopes can be entertained that there is any improvement in his mental power. On this view it is painfully evident that the old delusions are increased by long use and reference. Any of you, gentlemen, might sit down and talk with him on any ordinary subjects; but, if you should happen to mention his being arrested in his career of money-making, then, indeed, the evidences of insane delusions are painfully numerous.

This delusion is not affected by surrounding circumstances or change of scene. We find from the evidence of Calvin Stearns, (in whose house O. remained for ten months) that the old gentleman, who had none but the kindest feelings towards the petitioner, says he considers him of an unsound state of mind on some subjects.

Then in reference to the meeting said to have taken place between Oakes and his alleged wife in the streets of Boston. The story he told was that the woman was suffering from "pretty short commons" Well, what does this husband do? The delusive nature of the story becomes evident, when we find he does not raise a hand to help her Should we believe this? For my part, I cannot believe it, from all I can learn of the kindness of heart belonging to Josiah Oakes. No, gentlemen, I will not believe he could act in such a manner to a wife. If we suppose that he was not married, then we shall perceive a similar kind of delusion to the story about the sash window which he told to Mr. Hamlet, the toll gatherer. The tendecy to boasting is natural to him at the best of times, as Dr. Bell says; and of course, delusion would aggravate this unfortuna e lack of judgment.

The permanent nature of the delusions influencing the mind of Oakes, may be seen also in other matters which my learned opponents have mentioned in the evidence. I need not go beyond the evidence they have themselves furnished From Mr. Hamlet and Mr. Tyler, we find that no such circumstance is likely to have occurred without coming to their knowledge. Mr. Hamlet was four years an officer in the asylum, and seven years toll-gatherer on one of

the Boston bridges. Mr Tyler is the steward of the asylum. We must suppose them to be men of integrity The sash window story is parallel with O.'s delusions of smartness, purity, and perfection of ability in law, medicine, war, and finance.

In speaking to Mrs. Devens, he still repeats the assertion of being worth $35 000. She says she tried to explain the difference to him, but failed. We find him telling Dr. Lewis the same amount, although since O.'s acquaintance with the doctor, he has been entirely at liberty, so far as regards the restraint of guardianship. Besides. Benjamin Smith, a man enjoying the full confidence of the whole family estimates O's property to be worth $8 830 75. The large amounts so continually mentioned by Oakes form the best proof of the worst kind of dementia which can influence a man of business. A mistaken notion of physical power is harmless in an active old gentleman; but a ridiculous over estimate in his property is a fatal sign of incapacity.

Mr Rantoul made one of his happiest efforts in a speech of great power and ingennity. His staple argument was based upon the letter written by Dr. Bell just before Mr. Oakes went to Northfield. We are unable to give a copy of this irrisistable speech, but will give the letter itself, and leave that big jury—the public—to judge whether it proves that Dr. Bell considered Mr. Oakes exempt from the restraint of a guardianship:—

The following is a copy of the letter, the date of which we find penciled by Josiah Oakes, April 4th 1849:—

Wednesday Evening. Dear Sir,—As I may not see you in the morning before you start, I would say that Mrs Houghton desires me to ask you to write to her after you get to your new residence. She feels great anxiety about you, and it will relieve her to know, under your own hand, that you are in good health. Her recent long and terrible attack of nervous disease owes part of its origin to what she suffered on your account before you came here, and I regard it as of great moment that hereafter her mind may be at ease respecting you.

As you expressed the desire to return here in case you do not find things to your mind at Northfield. I would say that you will always find a welcome here, when you seek it.

As your present leaving us on trial is, as you know, in consequence of my solicitation, I trust that you will be very cautious not to get yourself excited, as Josiah and your other friends would naturally blame me. If you continue as well as you have been of late, they will be willing to have your guardianship removed after a while, when you have shown folks that you are really sound.

If you undertake contracts, or business, or threaten them, they will feel that you are not so well as you have lately seemed, and will decline giving up the guardianship, or may insist on your returning here or going to Brattleboro'.

Your regard for Sophronia will, I am confident, operate on your mind to prevent your pursuing a course calculated to agitate and distress her, even if other considerations did not operate on you.

Hoping that your present measure of health may be continued to you, and that your old age may find you blessed in kind children and peace of mind,

I am, your friend, L. V. BELL.

JUDGE METCALFE'S CHARGE.

In deciding on the case here presented, it is important to consider what our duty is. The evidence given is left to your decision and the main question may be stated in two parts:—Is Josiah Oakes recovered from his insanity? Is he competent to take care of his property? This is the issue, nothing more nor less.

Gentlemen the main question therefore to be considered is this however circumstances may change or subdivide the form. The proceedings under the habeas corpus and the prior decrees in the courts will be superseded or confirmed by your decision.

By the laws of the land, every individual is entitled to his liberty, unless it can be shown that there are just grounds for a departure from this implied and secured liberty.

But, gentlemen, personal liberty is not the only thing to be sought for in the aims of life. This world was not created for wild men to roam and range in pursuit of a liberty which secures only selfish rights. Liberty for all is best secured by the law, the gospel, and morality.

Of course, every man is entitled to share in this social security of constitutional freedom unless he is deprived, by incapacity, from enjoying it. The liberty that is not for the general good has but a questionable merit. All of us, to fulfil our duties in life, must submit to a certain amount of restraint, even in the pursuit of happiness and liberty. The judge on the bench, the jury on the panel, and the workman at his business, must all obey this grand social law of obedience to the public welfare. Liberty is not a shadow without a definition or an object. It is the result of orderly arrangement, specifying our duties, and securing our happiness.

The question of insanity applies to the particular case we are considering; and if the petitioner is insane, it should invalidate his right to go at large in society, In a state of civilization, the law assumes the general welfare to be paramount.

As I first stated, the abstract question before you is—Has Josiah Oakes recovered from his insanity? But practically, the question is—Can he be released from guardianship?

We must not overlook the grand conservative principles of social security and constitutional liberty, however interested our feelings may be towards individuals. I trust these principles, being thus explained, may be your guide in the responsibility now resting on you.

I think it proper to observe, as I said two days ago, that I know nothing about the case in the Supreme Court. It all occurred before I was a member of that Court. I only heard of it by casual conversation at the time among my fellow citizens. Our Judge of Probate has already decided on previous applications relating to the Supreme Court decree. Gentlemen, the same principles of law and liberty are still existing as our guide which governed the former decisions.

It is for you to say whether, since January 1845, the Petitioner has recovered from the insanity which caused the previous decisions of our Courts.

It must be assumed that the petitioner was insane at the time the guardian was appointed, His Counsel have admitted it. But it is contended that the mental disease is cured.

Under such circumstances, a man is presumed to be insane, and it is for his legal representatives to show that he is insane.

We must look for this proof, as it is positively required to establish his right to have the previous decisions set aside.

In this instance, I am not prepared so say that the petitioner is entitled to his discharge from guardianship. Some discretion belongs to the Court, and I trust that the counsel, on both sides, will never suppose that such an application would be lightly considered. Any person who would refuse conscientiously to consider such a petition could not be fit to occupy a place on this bench.

The petitioner's counsel states that he has sustained the prayer of the petition. It is for you to judge.

The course of argument was such, that it appeared as if the prisoner had been deprived of his personal liberty put in prison, etc. Of the arrangements at the McLean Asylum, Drs. Bell and Fox have not been questioned, but the evidence has shown that it is periodically inspected by a visiting committee of our own fellow citizens. Let me here, once for all, state impressively to your minds, that the medical gentlemen who testified, with the exception of Drs. Bell and Fox, do not profess to be qualified on the subject of insanity. They gave their opinions, and it is for you to consider the value of them. Keep this in remembrance, and decide according to your united opinion as a jury.

The nature of the insanity has been somewhat dwelt upon. It has beeen assumed that if the alternations have ceased he is now well. This inference is neither fair nor correct. According to the types of insanity shown, we should not infer this. The present type may have changed, but that does not say the idiopathic disease is cured, in the face of the experience of years.

In the testimony of Mrs. Devens, it appears that up to a very recent period she was of the same opinion as all the rest of the children. This witness appears very intelligent — she is certainly very shrewd — but betrays herself much interested. I must say gentlemen that this testimony is exceedingly exaggerated. When a witness comes up to the stand and makes use of such set sentences, the testimony must be looked upon with considerable caution when we wish to form an unbiased opinion, and the statements are not corroborated by more impartial witnesses. I took the liberty of advising her (in an under tone of voice) to be more observant of the solemn importance of her duty, but it did not seem to make any improvement in her manner.

Mrs. Devens's assertion (entirely uncalled for) that she would rather see her father married to the disreputable Sarah Jane Neal than placed under a guardian, is one of those ebullitions of mere feeling which produce a style of testimony that experience teaches us to be very cautious in entertaining. I do trust, gentlemen, that I have done no more than my duty.

Drs. Bell and Fox tell us that four years generally establishes an incurable case of insanity. This is evidence from qualified professors, and is entitled to great weight in forming a correct judgment of the present state of the petitioner. If you can, gentlemen, release him from his guardianship, every one must rejoice. But, gentlemen, the law and the testimony must be our guide.

When Mr. Devens had the petitioner removed to Northfield, it does not appear that the guardian has ever objected to such interference. This has left a strong impression upon my mind that such guardianship would not hinder any rational enjoyment the petitioner might desire. Many a man is under guardianship who may not be insane. Spendthrifts and all persons *non compos mentis* are liable to restraint by the law. It is easy for unscrupulous advisers to magnify the evils of a guardianship while appearing to advocate the principles of liberty on general grounds.

The stated question rests with you, gentlemen.

COPY OF THE VERDICT.

Supreme Judicial Court. Middlesex County, April Term, 1850. In the matter of Josiah Oakes, Petitioner to the removal of his Guardian. It is therefore considered by the Court that the Letters of Guardianship be revoked etc., etc., etc.

SUPREME JUDICIAL COURT OF MASSACHUSETTS,

January, 1845. At Boston. [Vide 8 Law Rep. 122.]

A person who is insane or delirious, may be confined or restrained of his liberty, by his family, or by others, to such extent and for such length of time, as may be necessary to prevent injury or danger to himself and others.

Such confinement and restraint may be in his own house, or in a suitable asylum or hospital. The repetition and frequent occurrence of acts, without any motive sufficient to actuate persons of ordinary sense, are evidence of aberration of mind; and, in such cases, accumulation of proof becomes important.

Such aberration of mind will authorize the restraint of the person subject thereto, although he has not committed any actual violence.

This was a case of habeas corpus, prosecuted to procure the discharge from confinement of Josiah Oakes, who was committed to the McLean Hospital for the Insane, on the 16th of December last. The case was heard before the whole court, and the hearing occupied the whole of two days. The application of Mr. Oakes' sons for his admission into the asylum was produced, and their agreement to pay his board. All the proceedings appearing to have been regular, the court ruled that the burden was upon the petitioner to make out a sufficient case for his discharge. A large number of witnesses were called, who testified that they were acquainted with Mr. Oakes, and considered him a man of much industry and shrewdness; and, also, that they should not have inferred from his conduct or appearance during the last three months, that he was not in his right mind. Several of them said, however, that his faculties might have been affected by age. To sustain the detention of Mr, Oakes, the deposition of Dr Bell was read, and a number of witnesses were called, among whom was Dr. John Fox,—under whose immediate charge the prisoner was at the asylum, several members of the family, and other acquaintances. They testified to some irregularities in the conduct and conversation of Mr. Oakes; and Dr. Fox gave it as his decided opinion that he was insane. It appeared that Oakes had formarly been confined in the Asylum for ten days, for a temporary aberration of mind, and was then discharged as cured. His wife died in October last; and for a short time previous, and since her death, a change in his appearance had been noticed. After the testimony was concluded, the counsel who opposed the petitioner stated that it was a mere question of evidence, and that he did not consider it necessary to argue it to the court. The counsel on the other side made an argument in favor of the release of Mr. Oakes.

B. F. HALLETT and GEORGE A. SMITH for the Petitioner,
BUTTRICK, of East Cambridge, against the Petitioner.

Shaw, C. J. in delivering the opinion of the court, said that the court had examined the testimony and bestowed upon the case the time and attention which its great importance demanded. The subject was one in which every member of the community has a deep and abiding interest.

Mr. Oakes, who is sixty-seven years old, became infatuated after a young woman, by the name of Sarah Jane Neal, and engaged to marry her a few days after the death of his wife. To prevent the marriage, prosecutions were commenced against him in the Police Court, by some members of the family, for lewdness of conduct.

The power of granting relief upon habeas corpus is, in one sense, a discretionary power. In exercising it, the court is bound by rules of law, as applicable to the facts of each particular case. The circumstances under which persons may be legally detained are extremely various, and a correct judgment in each case requires the exercise of judicial discretion.

Mr. Oakes has been placed in an Insane Hospital, a known public establishment, with a responsible board of trustees; and, so far, it has always been regarded as a satisfactory and useful institution. It may be called a boarding house, or place of relief, protection and cure for a person whose mind is diseased. It has been inquired by what power he is there confined? It has been argued that the constitution makes it imperative upon the court to discharge any person detained against his will; and that by the common law, no person can be restrained

of his liberty, except by the judgment of his peers, or the law of the land. But we think there is no provision, either of the common law or of the constitution which makes it the duty of the court to discharge every person, whether sane or insane, who is kept in confinement against his will.

The provision, if it be true, must be general and absolute, and not governed by any questions of expediency to suit the emergencies of any particular case.

The right to restrain an insane person of his liberty, is found in that great law of humanity, which makes it necessary to confine those whose going at large would be dangerous to themselves or others. In the delirium of a fever, or in the case of a person seized with a fit, unless this were the law, no one could be restrained against his will. And the necessity which creates the law, creates the limitation of the law. In the case of an application to have a guardian appointed over the person and estate of an insane person, under the statute, some time must necessarily elapse before the appointment can be made, and during that time restraint may be necessary. If there is no right to exercise that restraint for a fortnight, there is no right to exercise it for an hour. And if a man may be restrained in his own house, he may be restrained in a suitable Asylum, under the same limitations and rules. Private institutions for the insane have been in use, and sanctioned by the courts, not established by any positive law, but by the great law of necessity and humanity. Their existence was known and acknowledged at the time the constitution was adopted. The provisions of the constitution in relation to this subject must be taken with such limitations and must bear such construction, as arise out of the circumstances of the case. Besides, it is a principal of law that an insane person has no will of his own. In that case it becomes the duty of others to provide for his safety and their own. But whose duty does it become? If we say, of his children, he may have no children; if of his parents, brothers or sisters, he may have no relatives who can perform the duty. Those who are about him must exercise it. His children, his wife, his brothers or sisters are suitable persons to take the charge of him if they are at hand. But a stranger, in a hotel or a boarding house, may become delirious In that case it becomes incumbent on those about him to restrain him, for such time only as the necessity for such restraint continues. The same rule may apply in the case of some surgical operations, where a person cannot have a will of his own, and it becomes necessary that he should be held by others.

The question must then arise in each particular case, whether a person's own safety or that of others requires that he should be restrained for a certain time, and whether restraint is necessary for his restoration, or will be conducive thereto. The restraint can continue as long as the necessity continues. This is the limitation and the proper limitation. The physician of the Asylum can only exercise the same power of restraint which has been laid down as to be exercised by others in like cases.

The present is one of the cases in which insanity must be inquired into by judicial tribunals. In such inquiries we would carefully keep in mind the object of the inquiry. The same rules do not apply to the same extent in this case, which apply in the case of a person who has committed a crime, and is sought to be excused on the ground of insanity. And when it becomes necessary to appoint a guardian under the statute, these evidences of imbecility, improvidence, or wandering of mind, without any dangerous form of insanity, becomes material, although it would not be in a case like the present. Many considerations have weight in one case which could have none in the other. We must not fall into the general notion, that a person is not to be considered insane, merely because he does not always show wildness of conduct in his every-day appearance. Since the subject has been scientifically investigated, we know that a person may show shrewdness and sagacity in his business, but still be decidedly insane on some one subject. There is one class of cases in which, at a particular period of life, a person's character appears to undergo a change, and the existence of a hallucination or delusion is shown, which cannot be removed by reasoning, argument, or persuasion. This species of insanity frequently shows itself in outbreaks of passion, on occasions where there appears no cause sufficient to produce them in a person of sound mind.

From a survey of the evidence we have come to the conclusion that Mr. Oakes is laboring under such a delusion as renders it proper that he should be restrained, at least for a time. He has before been in the same hospital, and his cure after ten days' confinement at that time, indicates the proper course to be pursued now. That was a case of temporary aberration of mind, or excitement. Before his confinement he had made a contract to do a piece of work for Mr. Bowman, which he went on and completed immediately after his release; and Mr. Bowman testifies that the contract was a good bargain for Mr. Oakes. This shows that it was not a necessary consequence of insanity, that he should make an improvident contract. The general tenor of the evidence is, that Mr. Oakes was a careful, prudent and industrious man, attached to his children and his wife, and the most perfect confidence subsisted between him and his wife. He resided at Cambridgeport for a time, and afterwards at East Cambridge.

His business was wharf-building, and pile-driving, which he conducted with prudence and success. He was a man of strong feelings and passions, easily subject to excitement, which however, readily subsides. This is usual with persons of much energy of character. In 1839, or later, according to the testimony of some witnesses, he manifested a change of character. He occasionally ill-treated his wife, and frequently used hard language. He had been quite a domestic man, but now began to be frequently absent in the evening, causing anxiety to his family. His wife died in October last. He did not manifest the feeling upon that occasion which was to be expected from a person in his right mind. On the evening when his wife was in a dying condition, of which he was informed, he left the house, and passed the evening at a house in Boston, in the company of a person to whom he afterwards became engaged. When he came home, he asked if his wife was dead, in a manner which exceedingly shocked his daughters. His conduct at the funeral showed a perversion of mind. It may be said that this was the consequence of his rescuing the attempt of the family to put him under guardian-ship, and confine him in the insane hospital. But he did not manifest such resentment. When speaking upon the subject he said they were not to blame, for they supposed he was really insane. To a man acting under ordinary feelings and motives, such resentment, although it might be naturally felt for the time, could not be lasting.

On considering his state of mind, his alternation of depression and excitement, we think he did not act from ordinary motives and feelings His persisting in his intention to marry the young woman who has been spoken of, and refusing to believe the evidence of her bad character, are indications of this. It is in evidence that he positively declared to his friends who were shocked at his declared determination to be married, that he would not marry the girl under six months; and afterwards made repeated attempts to have the ceremony performed within two months of his wife's death. The fact of an old man, a widower, wishing to marry a young wife, is not of itself evidence of insanity. But the circumstances and the conduct of Mr. Oakes, attending the proposed marriage are evidence that he was laboring under an hallucination of mind. His refusal to believe any evidence of the girl's bad character, his unlimited confidence in his own knowledge, his letters to Governor Morton and to his son all show the morbid excitement of his mind. The testimony of Dr. Fox, the physician at the asylum, is important. His comparison of the tenor of his conduct and appearance, with his conduct and appearance at the time he was before confined in the asylum serves to show his state of mind. He has always, when in this state, said he could at any time make a large fortune in a short time,—could become independent again in a few months, if he should lose all he had,—that it was impossible he could make a bad bargain,—and that he must always make money,—it could not be otherwise. He declared that he would not believe the character of the girl to be bad, although she should be — that he knew better than all the courts and the juries.

Dr. Fox testifies that he has no doubts that Mr. Oakes is insane. His opinion must have great weight in this case, from his skill and experience in the treatment of insanity. He has had the care of insane persons for a long time. If we cannot rely upon the opinion of those who have the charge of the institution, and there is no law to restrain the persons confined, we must set all the insane at large who are confined in the McLean Asylum. He thinks it dangerous for Mr Oakes to be at large. Dr. McLellan a physician at East Cambridge, whose testimony is in the case, expresses a different opinion. He says he had a conversation with Mr. Oakes of about twenty minutes He could discover no indications of an insane mind. He knows nothing of the character of the girl, or of the facts and circumstances of the case, except as they were stated to him by Mr. Oakes. It is well known that persons laboring under a delusion often reason with sagacity upon false promises. On the other hand Dr. Fox is bound by his duty, his profession, and his responsibility to the public, to bestow a careful examination in cases like this, and his opinion may well over balance one which is formed upon so cursory an interview as that of Dr. McLellan's. Mr. Tyler, the steward of the institution, confirms the statement of Dr. Fox, as to the appearance and conduct of Mr. Oakes. It is not necessary to consider the deposition of Dr. Bell, as it would not vary our conclusion upon the case.

No objection can be made to the competency of the children as witnesses. If there were anything to justify a belief in a combination of the family for sinister purposes, they would not be entitled to much confidence. But their testimony appears candid and unobjectionable, and there is nothing which shows any improper design. A unanimity of purpose in the family is no evidence of sinister intentions, unless the object sought to be obtained by the combination is unlawful or improper. The object here appears entirely laudable, and intended for the good of a parent whom they love and respect If they considered the marriage as a rash act, and a consequence of his insanity, they are justified in attempting to prevent it. His earnestness in obtaining the publication of an article which his son and the printer considered libellous, and his giving a bond in the unnecessarily large sum of $10,000 to save the printer harmless; show that his mind was sensibly excited. It is objected that one of his sons prepared the bond, and said he thought he would see how far his father would enter into the matter. But he was

requested by his father to put it in shape, and he at the same time enjoined it upon the printer not to publish it. The father showed a determination to carry the matter through, and had other legal advice besides that of his son.

Mr. Oakes's eagerness to engage in a large speculation in real estate, as stated by Dr. Parkman and Capt. Richardson, and his conduct in regard to it, are also in point. The fact of a person's engaging in extravagant or daring speculations, is not of itself sufficient evidence to prove him insane, but the manner in which Mr. Oakes conducted the affair, show his mind to be unsound. Dr. Parkman saw, by his elevation of manner, that he was not in a fit state to conclude the large purchase which he desired to make and refused to make the bargain unless he would get the consent of his family. Mr. Oakes, under the delusion that such consent was the only obstacle to his wishes, went to his son-in-law, Mr. Houghton, told him he would give him one hundred dollars to go to Dr. Parkman and give his consent, and took out the money at the time and offered it to him. He afterwards went to Capt. Richardson, his brother-in-law, who lives in Duxbury and offered to give him fifty dollars a day to come with him to Boston and go to Dr. Parkman and give his consent.

The repetition and frequent occurrence of acts without any motive sufficient to actuate people of ordinary sense, necessarily induces a belief that the person who commits them is under a delusion. In cases of this kind, accumulation of proof becomes of considerable importance, It will not be necessary to examine the proof on the other side at any considerble length. It is not any want of sagacity in his usual business transactions, which induces us to think Mr. Oakes insane, but his evident hallucination, and his acting under unnatural excitement upon certain points. His overseeing his business correctly, and carefully seeing that the piles were driven well, does not prove him to be sane. He was under no delusion on that subject. His directions to Whitwell, the constable, shows only the shrewdness which frequently accompanies insanity.

Taking all the evidence together, we are of the opinion that Mr. Oakes is under that degree of insanity which renders it proper that he be restrained in the hospital; that his insanity is temporary in its character, and the restraint should last as long as is necessary for the safety of himself and others, and until he experiences relief from the present disease of his mind. Dr. Fox does not say positively that he considers his being at large as dangerous to others, but this species of insanity leads to ebullitions of passion, and in these ebullitions dangerous acts are likely to be committed. If committed, he would be excused from punishment on the ground of insanity. His daughters testify that if he carried weapons, they should be afraid of him. But there would be the same danger from weapons which might happen to be at hand, at the time of any occasional outbreak.

At present, we think it dangerous for Mr. Oakes to be at large, and that the care which he would meet with at the hospital would be more conducive to his cure than any other course of, treatment. It is, therefore, the order of the court that he be remanded to the McLean Asylum to remain there until further action on the subject.

FIRST OF CUSHING'S REPORTS, (Page 296.)

BENJAMIN F. HALLETT *vs.* JOSIAH OAKES.

Where one, who is restrained of his liberty against his will, and without legal process, as an insane person, employs counsel to prosecute a writ of habeas corpus, on his behalf, for the purpose of investigating the grounds and circumstances of the restraint, the counsel so employed will be entitled to recover a reasonable compensation for his services, provided they be rendered in good faith, and upon due inquiry into the causes of the confinement, and the condition of the party be such, that an investigation before a judicial tribunal is proper.

This action was brought to recover for professional services, rendered by the plaintiff, as an attorney and counsellor at law, for the defendant, between July, 1842, and January 16th, 1845, and was tried before Wells, C. J., in the court of common pleas.

It was admitted, on the part of the defendant, that the services were performed, and that the charges therefore were reasonable. The defendant, by his guardian, paid into court, under the rule, the amount of the charges for services rendered previous to January, 1845.

In regard to the services, which were the subject of the charges between the 1st,

and 16th of January, 1845, it appeared, that the defendant was then confined as a patient in the McLean Asylum for the insane, not under any process of law, but upon such evidence as the regulations of that institution required; that the plaintiff, at the request of the defendent rendered the services in question, in prosecuting a writ of habeas corpus in this court, in order to relieve the defendant from this restraint; and that upon the hearing the defendant was remanded to the asylum as an insane person.

It also appeared, that, on the 5th, of December, 1844, an application was made to the judge of probate for the county of Middlesex, to appoint a guardian for the defendant, as an insane person; that notice was duly given of the same to the defendant, and of the time and place for the hearing thereon; that, on the 16th, of December, the defendant was taken and conveyed to the asylum and there received, the usual forms for the admission of patients having been previously observed and complied with; and that after the decision of this court upon the habeas corpus, namely, the 19th, of January, 1845, Amory Houghton, was duly appointed guardian of the defendant, as an insane person. The guardian appeared and took upon himself the defence of this action. There was evidence on both sides, as to the sanity and capacity of the defendant, at the time the services in question were rendered.

The plaintiff contended, that even if the defendant were insane, yet as he was restrained of his liberty without legal process, he was entitled to a legal investigation of the cause of the restraint, and to the aid of counsel in such investigation, and that until he has been placed under guardianship as an insane person, he would be liable for all reasonable and beneficial services, which might be rendered for him, suitable to his condition and circumstances.

The court instructed the jury, that (assuming the defendant to be restrained of his liberty against his will, and without any legal process) if they should be satisfied, upon the evidence, that he was insane, at the time of the contract, or that his condition was such, that it was proper that the question of his insanity, and the propriety of his confinement, should be investigated before some legal tribunal; and that the plaintiff, at the request of the defendant, and acting in good faith, and upon due inquiry into the grounds and causes of confinement, instituted and prosecuted the proper legal proceedings for a judicial inquiry into the grounds of the restraint impressed upon the defendant, the plaintiff would be entitled to recover a reasonable compensation for his services; and that such services might be regarded in the light of necessaries, for which the defendant would be liable upon the same principle that minors are liable for necessaries.

The jury found a verdict for the Plaintiff; and, in reply to a question by the court, stated that being unable to agree on the question of the defendent's insanity, they gave their verdict for the plaintiff on the other ground submitted to them. The defendant, by his guardian, filed exceptions to the instructions.

E. Buttrick, for the defendent; B. F. Hallet, for himself.

Shaw, C. J. The jury not having agreed upon the fact, whether the defendent was or was not insane, at the time the services were rendered by the plaintiff, the question arises upon the other branch of the instructions, which relates to the defendent's liability as upon an implied contract for neccssaries.

The court are of opinion that the direction was correct. It proceeds on the ground, that the contract of a person of unsound mind is voidable but not void (Allis *v.* Billings. 6 Met, 415); and, then, whether void or not, in any particular case, must depend upon the circumstances.

Mental capacity is undoubtedly necessary to the validity of an express contract, which derives its force from the mutual agreement of the parties. But a party may be liable on an implied liability for supplies and services, which are reasonable and proper, and suitable to the state and condition of such party, though at the time he is not of sound mind. The contracts of such persons are placed in many respects on the same footing with those of infants. Seaver *v.* Phelps, 11 Pick 304; Baxter *v.* Earl of Portsmouth, 5 B. and C. 170; S. C. 7 D. and R. 614, and 2 C. and P. 178.

In the case of a person wounded, or fallen in apoplexy, we suppose that if med-

ical relief, suitable and necessary to his condition, is called by others before he becomes conscious, he will be liable, on a quantum meruit, for such professional services.

If, during a person's last sickness, accompanied with delirium and insanity, from which he never recovers, he should be attended by physicians and nurses called in, by friends, or be supplied with medicines and other necessaries suitable to his condition, at the instance of his family or other attendants, we suppose that such services and supplies would constitute a good, legal claim, which, by statute, is made a prefered one, on his estate.

Cases may be supposed, in which legal professional services may be as necessary to a person in such an unhappy condition as medical, and yet no one may have express authority to prove them. We think that services of this description would stand upon the ground of food, fuel, and other necessary supplies, where, from the duty of making a reasonable compensation, the law implies a promise. Of course, if such supplies or services are not necessary, if any imposition be practiced, or advantage taken, either by the person making the claim, or by any one in privity or in concert with him, no such duty arises, and no such promise is implied. That is always a question for the jury, if contested.

In the present case, we think the rule of law was correctly stated, and with proper qualifications. We must not be governed by the consideration, that the defendant was subsequently adjudged to be insane; at the time the plaintiff was retained, the defendant was restrained of his liberty, without warrant of law, that is to say, without legal process; and there was ample room for supposing that he was not insane, and, of course, was not lawfully restrained of his liberty. If such was the fact, nothing could be more necessary to the well-being of the defendant, than to obtain his liberty, and, for that purpose, to put in motion the proper proceedings for bringing his right to a judicial determination. Exceptions overruled.

PETITION OF JOSIAH OAKES.

To the Honorable the Senate and House of Representatives in General Court assembled.

Respectfully represents Josiah Oakes, that for seventy-four years he has been an inhabitaut and citizen of the Commonwealth of Massachusetts, and has conducted as a good citizen thereof in conformity to the laws. That in the year 1843, while pursuing his lawful business as a bridge and wharf builder in Cambridge, in the county of Middlesex, and engaged in contracts, which, as events have since proved, would have resulted in great and substantial pecuniary profit, an attempt was made to put him under guardianship as an insane person, which attempt he was then able to resist, having the control of his person and his property, and the same was defeated and prevented in due course of law.

That thereafter, in the year 1848, at the instigation of some of his own children, who were either deceived, or designedly intended to deprive him of the comforts of his home, and of a large and valuable property, which he had acquired by years of unremitting toil and industry; he was forcibly seized without any process of law and committed to the McLean Asylum in Somerville.

That this arrest and imprisonment, by which he was deprived and despoiled of his property, immunities and privileges, put out of the protection of the law, and deprived of his liberty and estate and consigned to a mad-house, was affected solely by said persons or their representatives, without the knowledge of your petitioner, procuring the certificate of a single physician, who had not seen your petitioner, but once or twice, not medically, for more than six months prior, and who had no personal knowledge of the health, in body or mind, of your petitioner. That by the benevolence of some persons, who became acquainted with this cruel proceeding, he was brought out on a writ of habeas corpus, and had a hearing thereon before the Supreme Court, but in that form of process — which is the only one which could reach his case — he could only be tried by the Bench, and not by a jury of his Peers. That at that time your petitioner was laboring under

the excitement which any sane man would be driven to, under the cruel and unjust treatment he had suffered; and taking advantage of his situation and inability to prepare for his defence, the instigators of his confinement were enabled, through evidence which he is prepared to prove, and which time has since demonstrated to have been disengenous and unfounded, to obtain a decision that he be temporarily remanded to the place of his confinement, the court, as your petitioner is well assured, having no intention or design that he should be deprived of his liberty or his property for the remainder of his life. And it was the intention of himself and his friends, after yielding to this order for a reasonable time, which put him in the power of his enemies, again to test the question of his right to personal liberty.

But on his being again incarcerated in said Asylum, his spirits were much broken and his physical health prostrated, and in that condition he was constrained by threats of incarceration for life if he did not comply, which threats came from those who originally caused his imprisonment, to sign a paper consenting to deliver up his property to the individuals above referred to, and to submit to the appointment of a guardian over him. By this act, which if were insane as they pretended, ought not to have any effect, and if he were sane, was forced from him under restraint,—his friends were deterred from making any defence before the Court of Probate, or taking an appeal to the Supreme Court, in which he could have had a trial by jury to test his sanity; and he was left without aid or counsel. The result was that, without a hearing in his behalf, a guardian was appointed over the person and property of your petitioner, and still continues against the wishes, rights and interest of your petitioner.

Your petitioner would also represent, that having been afflicted with the infirmity of deafness to an unusual degree, he was unable at the time of the legal investigation referred to, to hear but a small portion of the proceedings against him, in consequence of which he not only labored under a serious disadvantage in defending himself against the attempt to deprive him of his property and liberty, but it also subjected him to great misapprehension and unfavorable impression in the minds of the court; and thus all who did not know this infirmity and the situation of affairs, would naturally be predisposed to believe that the father was insane, if the children combined in attempting to make him appear so. And this, douhtless, had a strong influence over those connected with the asylum in which he was confined, and caused him to be so long held there at great expense and loss to his estate.

Upon the appointment of this guardian, under the above circumstance, instead of a "temporary" detention at the asylum which the order of the Court intended and declared was to be only "until further action upon the subject;" the said guardian made use of his power over the person of your petitioner and his hard earned property, to keep him confined in said private asylum for nearly four years; and thus has his property been used to do the most cruel wrong to its lawful owner, by paying to keep him a prisoner four years in a mad-house. So plain did it become, however, that your petitioner was fully in his right mind, that his persecutors were at last constrained to take him from the hospstal, and send him to Northfield, Franklin county, to be kept at board, and no man can there be found to douht the soundness of mind and calm behavior of your petitoner. Since then, your petitioner has been endeavoring to see if he can obtain any relief from the wrong still done him. At any moment he is liable to be siezed by ruffians as he has twice been under the direction of the individuals already named, and confined where they please. The right of the writ of habeas corpus, common to all, he is deprived of by this guardianship, forced from him while under restraint, nor, though the owner of many thousand dollars, with all his childreu grown up and able to take care of themselves, can he use one dollar to appeal to the laws or aid himself to get restored to his natural and civil rights, which he never forfeited.

To such an extent has his guardian gone, in attempting to deprive your petitioner of all his rights, that, after he was appointed guardian, he refused to pay a reasonable and moderate bill to the counsel employed by the petitioner to defend himself against the attempt of said guardian, and others, to confine him as a lunatic. The counsel sued this bill for his services, and said guardian carried it up to the Supreme Court, where it was decided that it was a just and proper charge, and that every man was entitled to his defence, when his liberty was in question. In this way, and by the gross misconduct of said guardian, and his abettor, a reasonable bill of fifty dollars was, by costs, increased to one hundred and seventy dollars, making, with lawyers' fees paid by said guardian, over two hundred dollars thus wasted of your petitioner's property, in order to prevent his ever again employing counsel to get his discharge.

And now your petitioner would humbly represent to your honorable body, that he has always managed his business affairs with discretion, dilligence and success; that it was admitted by the Court, at the hearing already referred to, that your petitioner was fully capable of taking care of his business concerns, and had managed them with shrewdness and sagacity; for the Court then said, "it is not any want of sagacity in his usual business transactions, which induces us to think Mr. Oakes insane." And, in fact, the only doubt which was raised in that respect, was concerning a bargain your petitioner had made with Doctor George Parkman, to purchase and fill up the flats near Cambridge Bridge, which enterprise was defeated solely by the conduct of the persons above named, but which it is now demonstrated (by the same thing having been since done by others) would have resulted in a vast profit to your petitioner, by the greatly enhanced value of lands in that section.

And in the hope of his being again restored to his rights as a citizen, and to some enjoyment of his property—still amounting to many thousand dollars—which he had accumulated by more than half a century of honest and self-denying toil, an appeal has been made to the Supreme Court to take off this unnatural guardianship. But your petitioner is opposed at every step by his son-in law, who holds his property, and can—as he does—employ it against him, while your petitioner cannot get a dollar of it to maintain his rights. That from the delays of the law, and the determination of the guardian and others to put off a hearing, it may be thus protracted, until, considering the chances of nature at his present advanced age, and the trials of his present condition, your petitioner may find no remedy to the end of his life.

Wherefore, your petitioner humbly prays, that, considering the wrongs which have been and may be done to citizens, by an abuse of law through the use of this ready means presented to relatives, ungrateful children, and others, of consigning to a private mad-house their parents, or those they wish to get rid of, and take their property, your honorable body will pass an act, which it is believed would be strictly compatible with the Constitution and Bill of Rights, providing that whenever, at any term of the Supreme Judicial Court, a cause shall be regularly pending, in which the question is involved of guardianship over a person of full age, charged with insanity or incapacity, such cause shall take its place on the docket, and be tried, before all other civil causes pending at said term.

And, as in duty bound, will ever pray.

JOSIAH OAKES.

PERSONAL LIBERTY—INSANITY.

THE CASE OF JOSIAH OAKES. — FROM THE BOSTON POST.

We believe that no decision in a court of law in Massachusetts ever struck that portion of the community who heard it with more surprise, than the conclusion the learned judges of the Supreme Court arrived at, to remand Mr. Oakes to a private mad house upon the law and facts, as they stood in his case. The decisions of our judicial tribunals are alwas received with respect, but it will be very difficult for common sense to reconcile itself to so unexpected a decree, especially when founded on so dangerous and unsatisfactory a reason. Here was a citizen, under the guarantees of the laws and constitution, who, by presumption of law, is to be held sane, and entitled to his personal liberty until it is taken from him by due process of law. His children disapproving a marriage he is contemplating, represent to a physician, who has not seen him for six months, that their father is insane, The physician, without any personal knowledge, gives a certificate that from representations made to him, he beleives the old man is insane. He is then forcibly seized and conveyed to a private mad house. The keeper receives him upon this certificate alone, the parties who bring him giving bond to pay his board. He is kept shut up thirty days; away from his friends, and all the world is told he is mad. At length his friends drag him before the court on habeas corpus. The physician of the private mad house, which receives its revenue from the price paid for patients, swears that he has seen the man frequently, has conversed with him once, to ascertain the state of his mind, and believes him to be insane beyond doubt. At

the same time he admits that he is not furiously mad, nor likely to be dangerous to himself or others, if at large. Another physician, not belonging to the establishment, testifies that he has seen and conversed with him, and believes that he is of sound mind. The court say that the opinion of the physician of the establishment is of the most weight, because he is accustomed to treat mad people, and his opinion in the balance of testimony, is to be taken as conclusive, and the old man is sent back to his keepers, and there is no appeal from this decree.

The enquiry arises, is this the tenor of personal liberty in Massachusetts? This man has had no trial by jury; he has not been confined by any process of law, and yet he is pronounced civilly dead, and shut up in a mad-house against his will, to be kept there entirely at the discretion of those who derive profit from his detention.

Such, under this decision, may be the fate of any old man who exhibits eccentricity, testiness, or imbecility of faculties. Dotage is transformed at once into insanity, and a way is opened for the relatives of any man, who wishes to get rid of him, or restrain his acts, to send him to a private mad house; and if this confinement excites and irritates him, those that receive him there will naturally regard it as proof of the insanity he is charged with.

What becomes of the law of personal liberty, under such a process? The positions taken by the counsel for Mr. Oakes, in the recent habeas corpus case, were in substance the following:

The constitution declares that "no subject shall be deprived of his liberty but by the judgment of his peers, (a jury) or the law of the land."

Mr. Oakes was deprived of his liberty by no legal process whatever. There is no law for confining the insane in the McLean Asylum. In this respect it is only a private establishment. He was put there without examination or any hearing. He has as much right to have his sanity tried, before he is deprived of his liberty, as if he were charged with a crime that would take away his liberty if proved against him.

When brought before the court on habeas corpus, the law declares, chap. 111, sec. 22, that "if no legal cause be shown for the imprisonment or restraint, the court or judge SHALL DISCHARGE THE PARTY THEREEROM. The law leaves no discretion with the court. There must be legal cause for restraint or he must be discharged!

What is legal cause? Insanity is doubtless legal cause of restraint, but how is it to be proved, and by what process of law? Not by the physician of a private mad house. The law recognizes no such process, and even if the court believe the man to be insane, how can they allow any one to deprive him of his liberty, except by the law of the land? The legal cause and due process of commitment are all the court have a right to inquire into, and if the legal cause and due process do not exist, he shall be discharged.

Suppose, then, an adult person, charged with being insane, is privately restrained. The law points out the process, and the only process by which he can be lawfully deprived of his liberty. If he is not restrained according to law, the constitution guaranties his liberty, and the habeas corpus act declares he shall be discharged.

The law is explicit, and guards all the rights of persons charged with insanity, until they are by law declared to be insane, and in no case under the law can they be declared insane but by a jury passing upon the facts. Suppose a person is charged with being furiously mad. Chapter 48 of the Revised Statutes provides that application shall be made to the Judge of Probate. A trial shall be had, and if the judge decides that the party is so mad as to render it manifestly dangerous to the community that he should be at large, he may be committed to the lunatic hospital. From this decree he has an appeal to the Supreme Court, and there, the question of fact, whether he is insane, may, if he require it, be tried by a jury. So if persons charged with crime are not indicted or not convicted, because the jury find they are insane, they may be committed, if dangerous to go at large. Thus no furiously mad person can be confined, without his right to a trial by jury to pass on his sanity, and thus the constitutional guarantee to personal liberty is preserved.

The only other classes of insanity are of persons not furiously mad, application may be made to two justices of the quorum, and the person complained of may have a jury summoned of six lawful men, to hear and determine whether he is insane, and not furiously mad. Here again the jury passes upon the question of insanity; and thus, in all cases of alleged insanity, the accused shall have, by law, the right which the constitution gives to every subject not to be deprived of liberty, but by the judgment of his peers.

Can the establishment of a private mad house, and the opinions of its physicians, get round the law and the constitution, and deprive the subject of his great constitutional right of trial by jury?

This great question, the Supreme Judges, in the case of Mr. Oakes, have decided in the affirmative. They have in effect substituted the opinion of Dr. Fox, the superintending physician, for the trial by jury, which the law expressily secures, and Mr. Oakes has no appeal from this decision. Thus he is confined as a lunatic against his will, and no jury has said he is insane.

Is it any answer to say that the man being insane, the guarantee of the constitution does not apply to him? Why that is the very question, is he insane? Before he loses his liberty as an insane man, he shall have the true process of law to declare him such. He shall have this very trial by jury, which this private, illegal process of commitment deprives him of. The question on the writ of hubeas corpus, is not, is the man mad? but is there legal cause for his restraint? The legal cause can only be found in legal process, and if the restraint is without law, the court cannot make it lawful by their opinion that the man is insane, because they have no right thus to deprive him of the legal process by which his sanity is to be tried. They cannot send him to a public hospital without such process and trial, and how can they send him, without it, to a private mad house, which the law does not recognize?

Suppose a man charged with murder is brought up in habeas corpus, and it turns out that the process of commitment is illegal. He is discharged, of course. The court do not inquire whether he committed the murder, and send him back, if they believe him guilty. So of State Prison convicts. When brought up on habeas corpus, and it is found that the sentence exceeded the power of the judge who passed it, a single day, they are discharged, solely because the restraint is without warrant of law. The court do not send them back, though they believe them guilty.

Now where is the difference, and how comes it, that in this case of confinement in a private mad house, for which there is no law whatever, the court can go behind the question of legal cause, and behind the constitution, and pass upon the insanity itself, and then decide that because his keepers say he is insane, he is to be continued in illegal restraint? It is surely not disrespectable to say that this is a circuitors process of legalizing illegality.

This decision is calculated to alarm the people for their personal liberty. The learned court have certainly substituted what they honestly believe to be about right, for the law and the constitution; and if private asylums have this dangerous power, it is time for the legislature to interfere, and to declare, as they have done in regard to all public lunatic hospitals, that no man shall be restrained in them but by due process of law, and shall in no case be adjudged insane without the right to atrial by jury on the fact of insanity. Here is the point on which the learned chief justice has erred. He assumes that an insane person has no will, and therefore the constitution does not apply to him. He may say the same of a thief or a homicide. He must be restrained, and the constitution does not protect him. But he must first be *committed by legal process for legal cause*, and the right to restrain him of liberty can be tried only by a jury if he demands it. Just so the charge of insanity should be *proved* by a jury, and the court have no discretion to go behind the constitution, and because they find a man restrained, without process of law under suspicion of insanity, confine this unlawful restraint, and deny him thereby his trial by jury.

REVISED STATUTES.

CHAPTER CXXV.

SECTION 20. Every person who, without lawful authority, shall forcibly, or secretly, confine or imprison any other person, within this State, against his will, or shall forcibly carry or send such person out of this State, or shall forcibly seize, or confine or shall inveigle, or kidnap any other person, with intent either to cause such person to be secretly confined or imprisoned in this State, against his will, or to cause such person to be sent out of this State against his will, or to be sold as a slave or in any way held to service against his will; and every person, who shall sell, or in any manner transfer for any term the service or labor of any negro, mulatto, or other person of color, who shall have been unlawfully seized, taken, inveigled or kidnapped from this State, to any other State, place or country, shall be punished by imprisonment in the State Prison, not more than ten years, or by fine not exceeding one thousand dollars and imprisonment in the county jail not more than two years.

SEC. 21. Every offence mentioned in the preceding section may be tried, either in the county in which the same may have been committed, or in any county in or to which the person so seized, taken, inveigled, kidnapped, or sold, or whose services shall be so sold or transferred, shall have been taken, confined, held, carried, or brought; and upon the trial of any such offence, the consent thereto of the person so taken, inveigled, kidnapped, or confined, shall not be a defence, unless it shall be made satisfactorily to appear to the jury that such consent was not obtained by fraud, nor extorted by duress or by threats.

SUPLEMENT TO THE REVISED STATUTES.

CHAPTER CCXXVIII. (page 50.)

AN ACT CONCERNING LUNATICS.

SECTION 1. The judges who are authorized by the forty-eighth chapter of the Revised Statutes to commit lunatics to the State Lunatic Hospital, may hear and determine complaints against persons charged as being lunatics, at such times and places as the said judges respectively shall appoint; and whenever request for that purpose shall be made by the person complained against, they shall issue a warrant to the sheriff or any other deputy of the sheriff, in their respective counties, directing such sheriff or deputy to summon a jury of six lawful men, to hear and determine the question, whether the person complained against is so furiously mad as to render it manifestly dangerous to the peace and safety of the community that such person should be at large.

SEC. 2. The said jurors shall be selected in equal numbers from the town in which the trial shall be had, and one adjoining town, or from two adjoining towns, as the judges aforesaid respectively shall direct, and the same proceedings shall be had in selecting and empannelling said jury; and they together with officers and witnesses who shall be in attendance, shall be entitled to such compensation as is prescribed in the twenty-fourth chapter of the Revised Statutes; *provided*, that in the counties of Suffolk and Nantucket, all the jurors may be taken from the same town.

Sec. 3 The said judges respectively shall preside at such trial, and administer to the jury an oath faithfully and impartially to try said issue, and the verdict of the jury shall be final on said complaint.

Sec. 4. If there shall not be a full jury of the persons summoned, by reason of challenges or otherwise, the said judges respectively, shall cause the officers who summoned the jury, or in his absence the officer attending the jury to return some suitable person or persons to supply the deficiency, and they shall have the same authority as the Supreme Judicial Court amd Court of Common Pleas have by law to enforce the attendance of jurors and witnesses, and to inflict fines for non attendance.

Sec. 5. The expenses of such trial, including the fees of all necessary witnesses, shall be certified and allowed by the said judges respectively, and paid out of the treasury of the county in which such trial shall be had.

Sec. 6. The salaries of the superintendent, the assistant physician, steward, and matron of said hospital, shall be paid quarterly, out of the treasury of the Commonwealth, and warrants shall be drawn therefor, and no charge shall be made against any lunatic, or any person or corporation who shall be liable for his support at said hospital, on account of said salaries.

Sec. 7. The word "settlement" in the ninth section of the said forty-eighth chapter of the Revised Statutes; shall be construed and taken to mean residence in all adjudications which shall be had thereon; *provided*, that if it shall be made to appear that the lunatic for whom payment is demanded has no settlement in this Commonwealth, the town of his residence shall not be liable for the expense incurred on his account, as provided in said section.

REVISED STATUTES OF THE COMMONWEALTH OF MASSACHUSETTS.

CHAPTER CXI. (page 625.)

OF THE WRIT OF HABEAS CORPUS.

Section 22. If no legal cause be shown for the imprisonment or restraint, the court or judge shall discharge the party therefrom.

Sec. 23. If the party is detained for any cause or offence, for which he is bailable, he shall be admitted to bail, if sufficient bail be offered, and if not, he shall be remanded, with an order of the court or judge, expressing the sum in which he shall be held to bail, and the court at which he shall be required to appear; and any justice of the peace may, at any time before the sitting of said court, bail the party pursuant to such order.

Sec. 24. If the party is committed on mesne process, if any civil action, for want of bail, and if it shall appear that the sum, for which bail is required, is excessive and unreasonable, and shall order, that on giving such bail, the party shall be discharged.

Sec. 25. If the party is lawfully imprisoned or restrained, and is not entitled to be enlarged on giving bail, he shall be remanded to the person, from whose custody he was taken, or to such other person or officer, as by law is authorized to detain him.

Sec. 26. Until judgment be given, the court or judge may remand the party, or may bail him to appear from day to day, or may commit him to the sheriff of the county, or place him under such other care and custody, as the circumstances of the case may require.

Sec. 27. Any officer, who shall refuse or neglect, for six hours, to deliver a true copy of the warrant or process, by which he detains any prisoner, to any person who rhall demand such copy, and tender the fees therefor, shall forfeit and pay to such spisoner the sum of two hundred dollars.

Sec. 28. If any person, to whom such writ of habeas corpus shall be directed, shall refuse to receive the same, or shall neglect to obey and execute it, according to the provisions of this chapter, and no sufficient excuse shall be shown for such refusal or neglect, the court or judge, before whom the writ was returnable, shall proceed forthwith, by process of attachment, as for a contempt, to compel obedience to the writ, and to punish the person guilty of the contempt.

Sec. 29. If such attachment shall be issued against a sheriff or his deputy, it may be directed to any coroner, or to any other person to be designated therein, who shall have full power to execute the same; and if the sheriff or his deputy should be committed upon such process, he may be committed to the jail of any county other than his own.

Sec. 30. Upon such refusal or neglect of the person to whom the writ of habeas corpus is directed, the court or judge may also issue a precept to any officer or other person to be designated therein, commanding him to bring forthwith, before such court or judge, the person, for whose benefit the writ of habeas corpus was issued, and the prisoner shall be thereupon discharged, bailed, or remanded, in like manner as if he had been brought in upon the writ of habeas corpus.

Sec. 31. Every person, guilty of such refusal or neglect to receive and execute a writ of habeas corpus, shall moreover forfeit and pay, to the party aggrieved thereby, the sum of four hundred dollars.

Sec. 32. If any one who has in his custody or under his power, any person entitled to a writ of habeas corpus, whether any writ has been issued or not, shall, with intent to elude the service of such writ, or to avoid the effect thereof, transfer such prisoner to the custody, or place him under the power or control, of any other person, or conceal him, or change the place of his confinement, the person so offending shall forfeit and pay to the party aggrieved thereby the sum of four hundred dollars.

Sec. 33. The recovery of any penalty, imposed by this chapter, shall not bar any action at the common law for false imprisonment, or for a false return to the writ of habeas corpus, or for any other injury or damage sustained by the aggrieved party.

Sec, 34. No person who has been discharged upon a habeas corpus, shall be again imprisoned or restrained for the same cause, unless he shall be indicted therefor, or convicted thereof, or committed for want of bail by some court of record having jurisdiction of the cause, or unless after a discharge for defect of proof, or for some material defect in the commitment, in a criminal case, he shall be again arrested on sufficient proof, and committed by legal process for the same offence.

Sec. 35. Nothing contained in this chapter shall be construed to restrain the power of the supreme judicial court, or any one of the justices thereof, to issue a writ of habeas corpus at their discretion, and thereupon to bail any person, for whatever cause he may be committed or restrained, or to discharge him, as law and justice shall require; except only persons committed by the governor and council, or by the senate, or the house of representatives, in the manner and for the causes, mentioned in the constitution.

Sec. 36. When any person is committed to jail on any criminal accusation, for want of bail, any justice of the court of common pleas, or any two justices of the peace and of the quorum, may admit him to bail, in like manner as might have been done by the court or magistrate who committed him; and the said justices, respectively, shall have power to issue a writ of habeas corpus, and to cause such prisoner to be brought before them, when it shall be necessary for the purpose expressed in this section.

Sec. 37. Nothing contained in this chapter shall be construed to restrain the power of any court to issue a writ of habeas corpus, when necessary, to bring before them any prisoner, for trial in any criminal case, lawfully pending in the same court, or to bring in any prisoner, to be examined as a witness in any suit or proceeding, civil or criminal, pending in such court, when they shall think the personal attendance and examination of the witness necessary for the attainment of justice.

Sec. 38. The writ de homine replegiando is abolished.